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AN ORDINANCE TO AMEND THE CODE OF THE COUNTY OF CHESTERFIELD, 1997, AS AMENDED, BY REPEALING SECTIONS 19-71, 19-72, 19-73, 19-74, 19-75, 19-238.5 AND 19-240, AND AMENDING AND RE-ENACTING SECTIONS 8-8; 19-232; 19-237, AND 19-238 RELATING TO WATER QUALITY IN THE UPPER SWIFT CREEK WATERSHED

BE IT ORDAINED by the Board of Supervisors of Chesterfield County:

(1) *That Sections 19-71, 19-72, 19-73, 19-74, 19-75, 19-238.5 and 19-240 of the Code of the County of Chesterfield, 1997, as amended, are repealed and Sections 8-8, 19-232, 19-237 and 19-238 are amended and re-enacted to read as follows:*

Sec. 8-8. Responsibility for the erosion and sediment control plan.

The owner shall be responsible for preparing, submitting and implementing the erosion and sediment control plan. The owner shall also be responsible for the following:

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- (e) All sediment basins constructed in conjunction with single family subdivisions that drain to the Swift Creek Reservoir must remain in place and fully stabilized until such time as compliance with 19-238(d)(1) has been achieved. ~~a joint permit from the US Army Corps of Engineers and the Virginia Department of Environmental Quality has been received which allow construction of the regional BMPs required by article VI of chapter 12 of this Code.~~

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~~Sec. 12-71. Purpose and intent of article.~~

~~The purpose and intent of this article is to require all developers of land to pay their pro-rata share of the cost of providing necessary facilities to control the volume and quality of runoff generated by new development in the Swift Creek Reservoir Watershed. The locations, type and size of such facilities has been established in the Management Master Plan and Maintenance Program for the Swift Creek Reservoir Watershed, adopted by the board of supervisors in October of 2000 (the "plan"). The plan shall constitute the general improvement program required by Code of Virginia, § 15.2-2243. The plan covers a 61 square mile area encompassed by the Swift Creek Reservoir Watershed. This designated area has common stormwater runoff and drainage conditions in that all runoff generated by new development drains to the Swift Creek Reservoir. The plan establishes a program for the strategic location of six types of structural and nonstructural regional best management practice facilities (BMPs) throughout the Swift Creek Reservoir Watershed. The designated BMPs are denoted on a map entitled "Swift Creek Watershed Siting Scenario 5" which is on file in the office of the director of the department of environmental engineering. The purpose of the system of regional BMPs is to~~

control the increased volume, velocity and quality of stormwater runoff that will be caused by anticipated development in the Swift Creek Reservoir Watershed.

Sec. 12-72. Basis for the pro-rata share fee.

~~The pro-rata fee has been calculated based on the increased volume of stormwater runoff, expressed as an increase in impervious area, resulting from projected development in the watershed. The projected costs on which the fee is based include design, land acquisition, construction, wetland mitigation and other factors related to the implementation of the regional BMPs enumerated above and are enumerated in the Watershed Management Plan and Maintenance Program for the Swift Creek Reservoir Watershed which is on file in the office of the director of environmental engineering. The formula developed for calculating the fee by the department of environmental engineering, which is hereby adopted as the formula for determining pro-rata shares, reflects the product of the amount of impervious area and the established fee per impervious acre. The formula shall be updated weekly to reflect changes in construction costs by applying the engineering new record construction cost index value.~~

Sec. 12-73. Pro-rata share contributions.

~~Anyone proposing to develop land within the Swift Creek Reservoir Watershed shall be required to pay the pro-rata share of the cost of providing the regional BMPs enumerated above, as provided for in the Watershed Management Plan and Maintenance Program for the Swift Creek Reservoir Watershed. Payment of the pro-rata share fee shall be due prior to the signature of the department of environmental engineering on the record plat for residential development, and prior to the environmental engineering department's approval of the site plan for non-residential development.~~

Sec. 12-74. Pro-rata share accounts.

~~The pro-rata payments received shall be kept in a separate account for the implementation of the Watershed Management Plan and Maintenance Program for the Swift Creek Reservoir and expended only for improvements and associated costs made in accordance with the approved plan. Any interest that accrues on such payments shall accrue to the benefit of the county.~~

Sec. 12-75. Pro-rata fee payments.

~~Pro-rata fee payments received shall be expended only for necessary engineering, related studies, land acquisition and the construction of those facilities identified in the Watershed Management Plan and Maintenance Program for the Swift Creek Reservoir.~~

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Sec. 19-232. Resource protection area regulations.

In addition to the general performance criteria set forth in section 19-233, the criteria in this section are applicable in resource protection areas.

- (a) Land development may be allowed in a resource protection area, subject to the approval of the department of environmental engineering, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) is a permitted encroachment

established pursuant to subdivision (d) of this section; (iv) is a road or driveway crossing satisfying the conditions set forth in subdivision (a)(4) of this section; or (v) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision (a)(5) of this section.

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- (5) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas, provided that (i) the department of environmental engineering has conclusively established that the location of the facility within the resource protection area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility must be consistent with ~~the Watershed Management Plan for the Swift Creek Reservoir or any other~~ a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the county's Chesapeake Bay Preservation Act program; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U. S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; (v) approval must be received from the department of environmental engineering prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.

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Sec. 19-237. Upper Swift Creek Watershed.

The Upper Swift Creek Watershed consists of all land in the county located upstream of the Swift Creek Reservoir Dam.

Sec. 19-238. Development regulations.

Any use, development or redevelopment of land in the Upper Swift Creek Watershed shall meet the following performance criteria:

- (a) No more land shall be disturbed than is necessary to provide for the desired use or development;
- (b) Indigenous vegetation shall be preserved to the maximum extent possible consistent with the use or development allowed;

- (c) Land development shall minimize impervious cover consistent with the use or development allowed;
- (d) (1) Stormwater runoff shall be controlled to achieve the following:
 - a. For any new use or development, the post-development, nonpoint-source pollution runoff loads of phosphorous and lead shall not exceed the following:
 - (i) Phosphorus:
 - 1. The post-development total phosphorus load for residential uses located in areas identified in the Midlothian Area Community Plan for low density residential (1.01 to 2.0 units per acre), in the Route 288 Corridor Plan for Residential (1 to 2.0 dwellings per acre), and in the Upper Swift Creek Plan for single family residential: (2.0 units/acre or less), shall not exceed 0.22 pounds per acre per year.
 - 2. The post-development total phosphorus load for all other uses shall not exceed 0.45 pounds per acre per year.
 - (ii) Lead:
 - 1. The post-development total lead load for nonresidential uses and residential uses at a density greater than 2.0 units per acre located in areas identified for such uses in the comprehensive plan shall not exceed 0.19 pounds per acre per year.
 - 2. The post-development total lead load for all other uses shall not exceed 0.03 pounds per acre per year.
 - b. For redevelopment sites not currently served by water quality best management practices, the existing nonpoint-source pollution runoff loads of phosphorus and lead shall be reduced by at least ten percent after redevelopment; however, the loads of such elements need not be reduced below the levels set forth in subsection (d)(1)a.
 - c. For redevelopment sites currently served by water quality best management practices, the post-development, nonpoint-source

pollution runoff loads of phosphorus and lead shall not exceed the existing loads or the loads set forth in subsection (d)(1)a, whichever are greater.

- (2) Compliance ~~The following stormwater management options shall be considered to comply with the requirements of subsection (d)(1):~~ shall be achieved on site through incorporation of best management practices that achieve the required control, unless the director of environmental engineering determines that one of the following storm water management options has been satisfied.

a. ~~Incorporation on the site of best management practices that achieve the required control.~~

b.a. ~~Compliance with a locally adopted regional stormwater management program incorporating pro rata share payments pursuant to the authority provided in Code of Virginia, § 15.2-2243, that achieves equivalent water quality protection. Mitigation measures approved by the director of environmental engineering in conjunction with the plan approval purchase. Mitigation measures may include, but are not limited to, the following: (i) construction of BMP's on or off-site, (ii) retrofitting an existing BMP on or off-site, (iii) stream or buffer enhancements or restoration, (iv) purchasing of credits from owners of other property in the watershed when best management practices on the other property exceed the required control, (v) use of perpetual conservation or open space easements, and (vi) if the foregoing mitigation measures are not adequate to achieve the required control, payment to the County of cash sufficient to achieve the required control through other mitigation measures as determined by the director of environmental engineering. Mitigation measures shall be approved by the director of environmental engineering only when: (i) the proposed mitigation measures are located within the Upper Swift Creek watershed, (ii) the proposed mitigation measures are sufficient to achieve the required control, and (iii) the applicant provides an engineer's certification that there is no viable means of sufficiently achieving the required control on site. Unless otherwise determined by the director of environmental engineering, mitigations measures shall be located in the same subwatershed of the Upper Swift Creek watershed.~~

b. Property that the director of planning has determined to be vested as to the right to comply with the required control through pro rata payments for regional BMPs pursuant to Article VI of chapter 12 repealed [date of adoption], shall achieve compliance through (i) a pro rata payment equal to what would have been required under chapter 12, which shall be used for mitigation measures in the

watershed as determined by the director of environmental engineering, (ii) compliance with the other provisions of 19-238(d)(2), or (iii) a combination thereof.

- c. Compliance with a state or locally implemented program of stormwater discharge permits pursuant to section 402(p) of the federal Clean Water Act, as set forth in 40 CFR 122, 123, 124 and 504, dated December 7, 1988.
- d. For a redevelopment site that is completely impervious as currently developed, restoring a minimum of 20 percent of the site to vegetated open space.

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~~Sec. 19-238.5. Boundary adjustments.~~

- (a) ~~Boundary adjustments, as provided for in section 19-231, shall not be permitted in the Upper Swift Creek watershed. The director of environmental engineering shall not grant an exception to this provision, provided, however, that an applicant may seek relief from this provision pursuant to section 19-19.~~

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~~Sec. 19-240. Exceptions.~~

- (a) ~~A written request for an exception to this division's requirements shall be made to the director of environmental engineering. It shall be accompanied by a water quality impact assessment identifying the impact of the proposed exception on such aspects as water quality and lands within the Upper Swift Creek watershed.~~
- (b) ~~The director of environmental engineering shall review the exception request and the water quality impact assessment. In making a determination, he may impose conditions or require alternatives that are necessary to protect water quality, protect the public safety and welfare and further the purpose and intent of this division. He may grant the exception if he finds all of the following:~~
 - (1) ~~Granting the exception shall not confer any special privileges upon the applicant that are denied by this division to other property owners in the Upper Swift Creek watershed.~~
 - (2) ~~The exception request is not based on conditions or circumstances that are self-created or self imposed.~~
 - (3) ~~The exception request is the minimum necessary to afford relief.~~
 - (4) ~~The exception request will be consistent with the purpose and intent of this division and not injurious to the neighborhood or otherwise detrimental to the public safety and welfare.~~
 - (5) ~~Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.~~

~~(c) Any person aggrieved by the director of environmental engineering's decision concerning an exception request may appeal the decision in accordance with section 19-268.~~

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(2) *That these ordinances shall become effective immediately upon adoption.*